IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

CRP.No. 272 of 2000(A)

CR.90/1973 of TALUK LAND BOARD, TIRUR
.....

REVN. PETITIONERS/DECLARANT
---

1. A.K.ABDUL KHADER HAJI,
S/O.SAIDALI HAJI, P.O.ATHAVANAD,
TIRUR TALUK, MALAPPURAM DIST.

2. A.K.MOHAMMED @ BAPPUTTY, -DO- -DO-.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS/RESPONDENTS:
---

1. STATE OF KERALA, REPRESENTED BY THEir
CHIEF SECRETARY, TRIVANDRUM.

2. THE TALUK LAND BOARD, TIRUR.

3. A.K.PATHUMMA, D/O.SAIDALI HAJI, ATHAVANAD P.O.,
TIRUR TALUK, MALAPPURAM DIST.

R1 & R2 BY GOVERNMENT PLEADER SRI SHYSON P. MANGUZHA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN,J.

C.R.P.NO.272 OF 2000

Dated this the 19th day of February, 2007

O R D E R

This revision is filed under Section 103 of the Kerla Land Reforms Act challenging the order of the Taluk Land Board, Tirur in C.R.No.90/73/B dated 30/11/1999. Mainly two contentions were urged. The actual extent of land in R.S.No.366/3 is only 46 cents as against 1.06 acres included in the accounts of the petitioner. Likewise, the properties comprised in R.S.Nos.126/1, 115 and 131 in Kurumbathur Village, Tirur Taluk are not in the possession of the petitioner and actually belonging to his wife, who had gifted the properties by document of the year 1974. It is the further contention the petitioner that the above two contentions urged by him were

directed to be re-considered as per the earlier orders passed by this Court in C.R.P.1302/76 as also in C.R.P.No.1195/90. The impugned order was passed pursuant to the order passed in C.R.P.No.1195/90 taking the very same stand without considering the matter in the light of the decision of this Court in the said C.R.P. The learned Government Pleader on the other hand supported the order of the Taluk Land Board.

2. Heard both sides.

3. I have gone through the order passed by the Taluk Land Board and also the order in C.R.P.No.1195/90. The Taluk Land Board found that in the absence of any materials produced by the petitioner to show that he is entitled to 46 cents of land in R.S.No.366/3 and in the light of the report of the authorised officer that the declarant was in possession of 1.06

acres of land in R.S.No.366/3 and not 46 cents as contended by the petitioner, this contention raised by the petitioner was rejected. The learned counsel for the petitioner submits that he cannot prove the negative fact. It is true that if it is a negative factor and when he contended that he has got title in respect of 46 cents of land in R.S.No.366/3, the document relating thereto could have been produced to support his contention. No such attempt is made. If, as a matter of fact, the title deed shows that the petitioner is holding title of an extent of 46 cents only, the burden will shift to the revenue to show that he is in possession of more than that extent. But the preliminary burden has not been discharged by the petitioner and therefore, I do not find that the order of the Taluk Land Board suffers from

any material irregularity or illegality in this regard. However, as regards the lands covered by R.S.Nos.126/1, 115 and 131 are concerned, it was found that these lands were standing in the name of the declarant's wife and therefore deemed to be the land belonging to the petitioner for the purpose of reckoning the ceiling limit. Though his wife gifted the property by the document of the year 1974, it is hit by the provisions of the Kerala Land Reforms Act. His specific plea is that the very same finding that is now rendered, was set aside by this Court in the order in C.R.P.No.1195/90, a copy of which is placed on record to support his contention. In the said order it is stated thus:

> "After the remit, the Taluk Land Board has only stated that the properties belonged to the declarant's wife Makki Umma, the 2nd declarant. She gifted the properties

> to her brother's son Areekkadan Mohammed alias Kunhi Bava in 1974. The Taluk Land Board held that the gift is not valid and it an invalid transfer according to the provisions of the Kerala Land Reforms Act and Rules. So, the objections are overruled. The plea of the revision petitioners is that the said properties are in the possession of tenants, and so the petitioners have no control or possession over the said properties. It is this aspect that has been directed to be investigated by the Taluk Land Board, as per the order in C.R.P.No.1302/76."

It is further observed that it is open to the Taluk Land Board to conduct an enquiry through the Authorised Officer, after sending notice to the persons to whom the gift has been made or conduct an investigation, in any other manner, which will go to show the actual possession and enjoyment of the properties covered by objection Nos.24,26 and 28. Thus, it could be seen that the fact that the

properties had been gifted by the wife of the declarant Areekkadan Mohammed alias Kunhi Bava in 1974 and that the said gift is invalid, will not conclude the issue. What has been directed to be considered by this Court is as to whether the property covered by the gift deed of the year 1974 was actually in the possession of tenants and for that purpose an enquiry has to be held with notice to the donee as well. Evidently, this has not been done.

4. In such circumstances, the finding of the Taluk Land Board as regards this point is concerned, is set aside. The matter is remanded to the Taluk Land Board for fresh consideration in accordance with law. The Taluk Land Board shall issue notice to the donee and consider the contention as to whether this property is outstanding in

possession of the donee as a tenant even on the date on which the gift deed was executed by the wife of the declarant and pass fresh orders.

Revision is partly allowed. Copy of the order shall be forwarded to the Taluk Land Board. Records shall be sent without delay.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO. 272 OF 2000

JUDGMENT

19th February, 2007